



**Rocky Mountain Region Office**

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November 16, 2010

ATTN: Draft EIS/HCP

Mr. Mike O'Herron, Montana DNRC Project Manager  
Ms. Kathleen Ports, USFWS Project Manager  
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Via Electronic and U.S. Mail

Dear DNRC Representatives:

Please accept these comments on behalf Defenders of Wildlife, a non-profit wildlife conservation organization whose nearly one million members and supporters nationwide, including more than 1,500 Montana residents, greatly value grizzly bears, lynx, the three imperiled trout species, and all other wildlife affected by your proposed Habitat Conservation Plan ("HCP").

We appreciate several of the ~~important~~ important improvements in the final HCP, which addressed some of the concerns about the draft HCP raised by Defenders of Wildlife and other conservation groups. For lynx, we appreciate that: (1) DNRC will maintain 20 percent of its winter foraging habitat within Lynx Management Areas; (2) that DNRC will be required to identify and retain unthinned 20 percent of each thinning project area to protect these vital components of lynx habitat; and (3) that the 58,000 acres of big game winter range were reclassified as potential lynx habitat in order to capture some additional key lynx areas. For grizzly bears, we appreciate the new commitments to avoid or minimize low elevation helicopter use and flight paths over key grizzly bear habitats. For the three imperiled species of trout, we appreciate that: (1) DNRC extended its riparian management zone (RMZ) commitment to non-HCP fish-bearing streams and perennial streams connected to all fish-bearing streams; (2) DNRC extended the no-harvest buffer within the HCP RMZ from 25 to 50 feet (we describe below why this should be extended to 150 feet, but this is an important step in the right direction); and (3) that DNRC expanded its commitment to reduce sedimentation in fish habitat by agreeing to reduce the impacts from road segments with a moderate risk (not just high risk) of sediment delivery. We also appreciate that DNRC revised its climate change analysis to help address this important challenge to be faced during the lifetime of the HCP.

We remain concerned, however, that the final HCP needs to be improved until it achieves the goal of minimizing and mitigating the impacts of DNRC's logging operations on the HCP species to the maximum extent practicable. Unfortunately, one of our concerns that were not resolved in the final HCP is the development of a reasonable range of alternatives that includes a "true conservation alternative" that significantly reduces roads and incorporates other science-based standards needed to effectively maintain habitat for the HCP species on state trust lands. Neither the DNRC nor the U.S. Fish & Wildlife Service has created a record showing why the mitigation measures in the preferred alternative are the "maximum that can be reasonably required" of the DNRC, as required by the Service's Habitat Conservation Planning Handbook.<sup>1</sup> DNRC should identify in its HCP and

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<sup>1</sup> The Handbook states that "where the adequacy of the mitigation is a close call, the record *must* contain some basis to conclude that the proposed program is the maximum that can be reasonably required by that applicant." U.S.

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NEPA analysis the incremental cost of additional mitigation measures, the benefits and costs of those measures, the amount of mitigation provided by other applicants in similar situations, and the abilities of DNRC to implement the additional measures.<sup>2</sup> Without this cost-benefit analysis, it remains impossible to conclude whether the preferred alternative reflects the maximum extent of mitigation and minimization practicable. Based on the information provided in the HCP analysis, we believe that neither the preferred alternative nor the conservation alternative comes close to satisfying this maximum practicable standard. Thus we cannot simply recommend an alternative to fix the many remaining problems in the final HCP. Instead, we urge DNRC to go back to the drawing board and create a significantly strengthened version of the conservation alternative (Alternative 3) in order to gain our support, and to fulfill the obligations of the Endangered Species Act (“ESA”), the National Environmental Policy Act, the Montana Environmental Policy Act, and DNRC’s own state forest land management plan.

To put it bluntly, Defenders of Wildlife is concerned that this HCP boat won’t float. We believe that DNRC’s proposed Habitat Conservation Plan has big problems, and in this letter we explain why and suggest how to fix them. In these comments, we draw extensively from comments that various state and federal agencies submitted in response to the draft HCP that were not sufficiently resolved in the final HCP. These agencies include the Montana Department of Fish, Wildlife and Parks (“FWP”), Montana Department of Environmental Quality (“DEQ”), and the federal Environmental Protection Agency (“EPA”).

First, a habitat conservation plan for DNRC is a great idea, as explained in this statement from the DEQ:

The HCP process is an excellent means to guide conservation of species habitat and to guide forest and rangeland management activities on DNRC trust lands.<sup>3</sup>

Essentially, DNRC has too many projects across too many varied landscapes to effectively mitigate the effects of its forest and rangeland management on the five HCP species—Grizzly bears, Canada lynx, Bull trout, Westslope cutthroat trout, and Interior redband trout—without a consistent set of science-based standards and guidelines.

Rather than creating a plan that conserves habitat for these five imperiled species, DNRC has instead created a plan to *expand* logging and road-building across 500,000 acres of their habitat in western Montana. Rather than minimizing and mitigating take (mortality or harm) to these species to the maximum extent practicable as the Endangered Species Act requires, DNRC’s proposed HCP starts with the prerequisite that its merchantable timber will be accessible by road so that its timber targets will be met, and only then proposes mitigation measures that are discretionary<sup>4</sup> and non-science-based, and thus will fail to achieve what should be the HCP’s primary objective: to protect the HCP species. Other natural resource professionals in Montana share this concern.

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Department of Interior Fish and Wildlife Service, Habitat Conservation Planning and Incidental Take Permit Processing Handbook, Nov. 4, 1996, pg. 7-3 (emphasis added).

<sup>2</sup> *Id.* at 7-3 to 7-4.

<sup>3</sup> Letter to DNRC from Robert Ray of Montana DEQ, October 2009

<sup>4</sup> “Soft commitments are included throughout the document—terms such as ‘discourage,’ ‘minimize,’ ‘where practicable,’ and the many ‘Allowances’ for violation of the commitments, limit their value as conservation measures... specific targets, caps, or processes for determining exceptions need to be explicitly and uniformly identified” (Smith 2009, p. 8)

“We have concerns that DNRC and USFWS resources... may be inadequate to implement, monitor, and achieve HCP targets, including water quality standards.”  
—Montana Department of Environmental Quality (Ray 2009, p. 2)

“FWP believes the draft EIS/HCP... falls short of accomplishing the overall EIS/HCP requirement of managing federally listed species on forested trust lands in a manner that will ensure the long-term survival of the covered species through protection and management of the species and their habitat.”  
—Montana Department of Fish, Wildlife and Parks (Smith 2009, p. 2)

“We recognize DNRC’s mission is to manage state trust lands to produce revenues for the trust beneficiaries, but have concerns that revenue concerns may override environmental or biological considerations... we are concerned that economic and revenue production considerations appear to be given higher priority than conservation needs.”  
—Montana Office of the U.S. Environmental Protection Agency (DalSoglio 2009, pp. 3-4)

### **The Top 3 “boat-wide” problems with the HCP**

1. DNRC excludes from the HCP many state parcels that are planned for transfer and development. Development of state lands is perhaps the single greatest threat facing the HCP species.<sup>5,6</sup> Failure to include these lands in the HCP and assess the impacts from their development severely weakens DNRC’s proposed cap on transition lands,<sup>7</sup> and makes it impossible to assess and effectively mitigate the cumulative effects of developing state trust lands on the HCP species.<sup>8</sup>

[Solution: expand the HCP project area to include all lands important to HCP species, whether planned for transition and development or not,<sup>9</sup> implement deed restrictions to prevent

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<sup>5</sup> “FWP recognizes that the greatest threat to covered species on DNRC-managed lands is those lands’ future disposition or development.” (Risley 2009, p. 2)

<sup>6</sup> “Residential, recreational, or commercial development (resulting from either disposition or DNRC leasing activities) in occupied or potential grizzly bear and lynx habitat is the single greatest threat to these species’ recovery and persistence. Selective exclusion of parcels, and the resulting increased probability that they will be disposed of or developed outside of the HCP Transition Lands Strategy caps, significantly compromises the conservation commitments applied on HCP lands.” (Smith 2009, p. 6)

<sup>7</sup> “DNRC’s proposal to exclude forested Trust Lands that 1) are likely to be proposed for development during the HCP permit period or 2) Trust Lands that have been recently managed (harvested), materially diminishes the conservation protections provided by the Transition Lands Strategy.” (Risley 2009, p. 2)

<sup>8</sup> “...the omission of critical DNRC administered fish and wildlife habitats in the EIS/HCP makes it impossible to analyze and understand the cumulative effects of activities on these lands... it is impossible to evaluate the enumerated conservation commitments on HCP lands without also considering the cumulative effects of development activities on adjacent excluded lands. For grizzlies in particular, residential and commercial development in occupied habitat has landscape-scale ramifications.” (Smith, 2009, pp. 1, 6)

<sup>9</sup> “...FWP continues to recommend including more forested Trust Lands in the HCP (including those likely subject to disposal and development within the HCP-permit term) while maintaining current Transition Lands Strategy removal caps.” (Risley 2009, p. 2)

development of key parcels (even if that reduces the revenue generated by DNRC),<sup>10</sup> monitor and regulate and expanded development of cabins on state lands.]<sup>11</sup>

2. DNRC presents no reasonable range of alternatives for its proposed HCP, which precludes a balanced choice between meeting its timber/grazing objectives and protecting HCP species.<sup>12</sup> None of DNRC's proposed alternatives minimize and mitigate the take of HCP species to the maximum extent practicable, as required by the Endangered Species Act. As a result, the Service cannot satisfy the legal standard for issuing an incidental take permit under the HCP.

[Solution: develop a true conservation alternative that minimizes road construction and implements other science-based standards to sufficiently protect HCP species.]<sup>13, 14, 15</sup>

3. DNRC's proposed 50-year lifetime for this HCP is unjustifiably long, especially given the tremendous uncertainties posed by climate change.

[Solution: DNRC should request from the U.S. Fish and Wildlife Service a ten-year Conditional Take Permit with the option to extend it if no significant changes are needed]<sup>16, 17</sup>

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<sup>10</sup> "HCP lands should come with deed restrictions consistent with the HCP if the lands are sold... Rescission of existing development leases within GBRZ/NROH is not mentioned as a potential conservation tool, but should be... Stating that deed restrictions may be placed on disposition parcels unless they negatively affect land value, effectively precludes their use as a conservation tool or commitment." (Smith 2009, pp. 4, 6, 10)

<sup>11</sup> "Cabin leases should be monitored for compliance with laws for water use and streambed and bank disturbance. Further development at these sites should follow setback criteria with buffers and allowable vegetation disturbance similar to those allowed for timber harvest." (Smith 2009, p. 4)

<sup>12</sup> "The greatest overall concern FWP has about the draft EIS/HCP is the lack of non-DNRC oversight concerning grazing and especially road building... and or the lack of density limitations on roads... [Conservation] Alternative 3 offers little meaningful additional lynx habitat protection above that of the Preferred Alternative..." (Smith 2009, pp. 1, 8)

<sup>13</sup> "A cap on the density of roads in watersheds that maintain HCP species should be considered. While best management practices (BMPs) and other mitigation measures can help to minimize the impacts of timber harvest in a drainage, high road densities tend to degrade water quality and fish habitat—even if all BMPs are strictly adhered to. It seems that a reasonable road density could be negotiated that would allow timber harvest while providing a higher level of protection for aquatic HCP species." (Smith 2009, p. 4)

<sup>14</sup> "Currently, there are high to very high road densities on HCP forested lands (3.1 mi/mi<sup>2</sup>), and each of the HCP alternatives propose increases in road density during the HCP period (to 4.7 mi/mi<sup>2</sup> in Alternative 2). Both the existing and proposed HCP road densities in Bull trout streams far exceed the road densities scientifically considered to be protective of bull trout habitat." (Ray 2009, pp. 9-10)

<sup>15</sup> "The USFWS... reported on results... of the relationship between road densities and bull trout status and distribution. Bull trout strongholds showed a very strong negative correlation with road densities. The average road density in bull trout strongholds was 0.45 mi/mi<sup>2</sup>. Bull trout populations classified as 'depressed' had an average road density of 1.4 mi/mi<sup>2</sup>, and bull trout typically were absent at an average road density of 1.7 mi/mi<sup>2</sup>... The existing and proposed HCP road densities far exceed the road densities considered to be protective of bull trout habitat... The DNRC and USFWS should at least target reductions in road density for sensitive watersheds and/or high road density watersheds with HCP fish species." (DalSoglio 2009, p. 3, emphasis hers)

### Leaks on the starboard side—the HCP fails to protect lynx

Among the greatest threats to lynx from this HCP is the proposed development of lands excluded from the HCP mentioned above.<sup>18</sup> Also, DNRC excluded portions of the Garnet Range important to lynx.<sup>19</sup> Lynx are habitat specialists, and certain patches have outstanding importance to them. Lynx habitat within the HCP is far from secure as well. DNRC patched some of the worst problems in the draft HCP by adding a standard to maintain 20 percent of the lynx's winter foraging habitat (mature forests where lynx hunt snowshoe hares), and to protect 20 percent of the lynx's summer foraging habitat from pre-commercial thinning (to help maintain cover and browse for hares in young stands). Yet we remain concerned that according to the final HCP, DNRC need not maintain hare habitat where it may compete with crop trees, and continues to seek exemptions from the 20 percent standard where it conflicts with its timber objectives. Also, the final HCP proposes to retain just 65 percent of its overall lynx habitat in suitable condition, when comparable plans (Washington DNR, USFS) require retaining 70 percent suitable habitat.

[Solution: The state lands planned for development and in the Garnet Range important to lynx should be included in the HCP, and their transition and development should be capped at 5 percent.<sup>20</sup> DNRC should develop a conservation alternative that contains science-based standards—such as those contained in the U.S. Forest Service's Northern Rockies Lynx Management Direction—to maintain lynx habitat without exemptions in cases where they conflict with its timber harvest objectives.<sup>21</sup>]

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<sup>16</sup> "...we suggest it would be appropriate to use a short duration for the Incidental Take Permit, with a conditional provision for an extension. We recommend that the USFWS issue a Conditional Take Permit for a short period, with an option to extend the Permit for some additional period conditioned upon monitoring reports supporting adequate habitat conditions and fish monitoring results demonstrating effective and improved aquatic habitat and water quality for bull trout and other HCP fish species." (Ray 2009, p. 16)

<sup>17</sup> "Since there are concerns regarding some of the commitments to promote adequate protection of aquatic ecological functions and conservation of HCP fish species (riparian buffers, riparian management prescriptions, lack of commitment to decrease road density, lack of USFWS resources for monitoring and oversight, etc.), we also believe it may be prudent for the USFWS to consider a duration of time shorter than 50 years for the Incidental Take Permit. We recommend that the USFWS consider issuing a permit for a shorter period (e.g., 25 years), perhaps with an option to extend the permit if monitoring reports provide adequate monitoring results and documentation that prescriptions are successful in improving aquatic habitat adequate to restore and protect bull trout and other HCP species." (DalSoglio 2009, p. 4)

<sup>18</sup> "Any significant loss of remaining mapped suitable or designated Lynx Critical Habitat threatens species recovery; the risk of development of these scarce habitats should be minimized by including them in the HCP, precluding development leasing as a term of the HCP, and applying conservative Transition Lands Strategy removal caps." (Smith 2009, pp. 6-7)

<sup>19</sup> "Mapped potential lynx habitat in the western Garnet mountains, outside of the Garnet LMA [Lynx Management Area], should be included in that--or a distinct--LMA" (Smith 2009, p. 10)

<sup>20</sup> "We strongly believe that the 5% disposition cap should, at minimum, be applied to lands within LMAs and, more logically, to HCP lands designated USFWS Lynx Critical Habitat." (Smith 2009, p. 10)

<sup>21</sup> "DNRC should consider additional reductions of pre-commercial thinning activities/acreage within mapped lynx habitat... Pre-commercial thinning within regenerating lynx habitat can severely affect its short and long-term suitability and use... At minimum, increased retention standards should be considered for the final HCP" (Smith 2009, pp. 8-9)

### **Leaks to port—the HCP fails to protect grizzly bears**

The greatest threats to grizzly bears from this HCP are both the proposed development of lands excluded from the HCP, and the high proposed road densities in each HCP alternative mentioned above. In addition, grizzly bears are likely to decline due to the opening up of previous secure, core areas to temporary logging and road-building. DNRC has also failed to minimize and mitigate the take of grizzly bears to the maximum extent practicable by failing to institute a DNRC-wide food storage/sanitation order.

[Solution: The U.S. Fish and Wildlife Service has long recognized the importance of maintaining core secure habitat in order to recover grizzlies, which are especially sensitive to development. DNRC should develop a conservation alternative that maintains or increases requirements for core security habitat, rather than replacing core areas with weaker “quiet” areas, and adopt a food storage/sanitation order.]<sup>22</sup>

### **Leaks in the bow—the HCP fails to protect the three HCP trout species**

DNRC reduced a major hole in the draft HCP by expanding its streamside buffer from 25 to 50 feet, but the final HCP still lacks sufficient, science-based standards to ensure the HCP fish species will be protected from the impacts of logging and grazing.<sup>23, 24</sup>

[Solution—Streamside buffers should be expanded to at least 150 feet, and there should be no logging in the entire floodplain width of Type I CMZ streams.<sup>25</sup> DNRC’s proposed standard to remove up to 50 percent of the trees 8” dbh or greater should be replaced with a standard to maintain similar species and age classes (i.e., >75 percent large diameter stem retention).<sup>26, 27</sup> DNRC’s proposed grazing standards allow too much forage reduction: riparian forage consumed by livestock should not exceed 40 percent (rather than 60 percent proposed in the HCP), and shrub

<sup>22</sup> “...[FWP] R2 bear managers strongly recommend that it be modified to include a provision requiring a department-wide Food Storage/Sanitation regulation applicable to all DNRC activities within RZ and NROH, regardless of a parcel’s HCP status...” (Smith 2009, p. 7)

<sup>23</sup> “A review of the literature recommends a minimum buffer of at least 100 feet to protect water quality and a buffer of 150 and minimal disturbance to minimize the impact on the fisheries in forested areas...25 feet is considered too narrow to protect water quality and fisheries. Ellis (2008a) recommends a buffer of at least 100 feet and with minimal disturbances to protect water quality, and Ellis (2008b) suggests a 150-foot buffer for protection of fish populations in forested areas.” (Smith 2009, pp. 2, 3)

<sup>24</sup> “...[W]e are concerned that DNRC’s proposed HCP buffer, while an improvement over the current SMZ rules, may still not adequately protect aquatic ecological functions and fisheries in many streams and riparian areas” (DalSoglio 2009, p. 2)

<sup>25</sup> “A no-harvest rule should be applied to the entire flood prone width for Type 1 channel migration zone (CMZ), streams...” (Smith 2009, p. 2)

<sup>26</sup> “We suggest that all HCP-fish bearing streams have a width of “no harvest” equal to the CMZ plus 25 feet on each side of the stream... We also recommend that the remaining riparian management zone (RMZ) have a reduced disturbance to act more like a buffer. The reduced disturbance should be to retain similar species and age classes of trees in the RMZ, rather than just 50% of the trees 8” or greater dbh (diameter at breast height) or 10 trees per 100 feet of stream... to approach recommended buffer widths for protecting fisheries and better accommodate wildlife use, the RMZ distance should be calculated as the CMZ plus site-potential tree height...” (Smith 2009, p. 3)

<sup>27</sup> “In DEQ’s experience, 50 feet RMZ’s do not consistently assure protection against increases in stream temperature... DEQ suggests that a RMZ default of one potential tree height buffer width with a no or substantially limited harvest (>75% large diameter stem retention) buffer would assure protection of temperature sensitive streams...” (Ray 2009, p. 5)

consumption should be limited to 20 percent light-medium (rather than 25 percent medium-heavy proposed in the HCP).<sup>28, 29</sup>

### **Leaks in the stern—the HCP fails to effectively address the threats posed by climate change**

The greatest deficiency of this HCP when it comes to protecting the HCP species from the impacts of human-induced climate change is that it “locks in” forestry and rangeland management prescriptions for the next 50 years. In just the past ten years, the combined effects of drought, insects, disease and fire across the project area have been dramatic, and while not all of these changes are known to be human-induced, all projections indicate that these and other climate-related changes will only increase in the decades ahead. Other climate change-specific needs of this HCP include better analysis of the projected impacts of climate change on DNRC’s forest and rangeland resources, and better monitoring of these changes over time so that management can adapt accordingly and effectively.

[Solution: As mentioned above, our solution to addressing the uncertain impacts of climate change is to shorten the incidental take permit to 10 years, with an option to extend the permit for some additional period conditioned upon satisfactory monitoring reports. DNRC should use existing, regionally explicit global warming models and other data to assess important climate-related issues like future habitat suitability for beetles, the implications for fire, water quantity, habitat, and vegetation: all of which will greatly affect the five HCP species. DNRC should also identify specific adaptive management measures that could be utilized to mitigate the effects of climate change.]

### **Conclusion**

We have gone to great lengths in these comments to explain why DNRC’s HCP boat won’t float, and propose solutions for how to repair the leaks. At this point in the process we strongly urge DNRC not to launch this boat. Keep it on land until all of its significant problems are thoroughly reviewed and fixed. Get oversight from outside state, federal and independent managers and scientists. Compare and contrast a revised DNRC HCP with other, successful HCP’s to identify other areas for improvement. When satisfied that this HCP does indeed float, launch her with the confidence that she is unsinkable (in the court of law and public opinion) and show her off as a shining example of Montana’s leadership in balancing the use of its outstanding natural resources with providing for the needs of its imperiled wildlife.

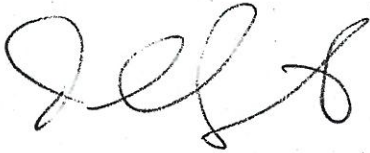
Thank you for your careful consideration of these comments, and Defenders of Wildlife looks forward to working with DNRC and USFWS to right this HCP ship and ensure the persistence of these five imperiled species in Montana.

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<sup>28</sup> “...[W]e recommend a riparian forage use of 40%, rather than 60%—that is too high of use in most areas. Likewise, we recommend riparian browse use at 20% of the shrubs in moderate- or light-browse form class. The HCP’s use of 25% in the heavy to moderate classes suggests the allowance of overgrazing of grasses and forbs, and the switching to and heavy use of willows, etc.” (Smith 2009, p. 4)

<sup>29</sup> “We support the use of the “moderate” riparian forage utilization rate of 40% (rather than 50%- full riparian utilization)...” (Ray 2009, p. 8)

Sincerely,



David Gaillard, Rocky Mountain Region Representative, [dgaillard@defenders.org](mailto:dgaillard@defenders.org)

cc: The Honorable Brian Schweitzer and other members of the Montana Land Board  
Montana DNRC Director Mary Sexton  
U.S. Fish and Wildlife Service Regional Director and Montana Field Supervisor

**References (copies available upon request)**

DalSoglio, Julie A. 2009. Letter to Mr. Tim Bodurtha, U.S. Fish and Wildlife Service and Ms. Kathleen Ports, Montana DNRC from Julie A. DalSoglio, Acting Director, Montana Office of the U.S. Environmental Protection Agency, September 14, 2009

Ray, Robert 2009. Letter to Ms. Kathleen Ports, Montana DNRC from Robert Ray, Watershed Protection Montana DEQ, October 8, 2009.

Risley, Dave 2009. Letter to Mr. Mike O'Herron, DNRC Project Manager from Dave Risley, Fish and Wildlife Administrator, Montana Fish, Wildlife and Parks, November 23, 2009, Ref:FW020-09.

Smith, T.O. 2009. Letter to Mr. Mike O'Herron, DNRC Project Manager from T.O. Smith, Bureau Chief, Strategic Planning and Data Services, Montana Fish, Wildlife and Parks, October 7, 2009.

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